71-1100

Supreme Court, U.S.
FILED
FEB 28 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 18558

UNITED STATES OF AMERICA,

Third Party Plaintiff Appellee.

vs.

STATE OF ILLINOIS,

Third Party Defendant Appellant.

PETITION FOR WRIT OF CERTIORARI

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No. 18558

UNITED STATES OF AMERICA,

Third Party Plaintiff-Appellee,

vs.

STATE OF ILLINOIS,

Third Party Defendant-Appellant.

PETITION FOR WRIT OF CERTIORARI

Petitioner, State of Illinois, respectfully prays that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in this proceeding on December 8, 1971. A Petition for Rehearing was denied on the 27th day of December, 1971.

THE OPINION BELOW

The Opinion of the Circuit Court of Appeals for the Seventh Circuit is not reported as yet and appears in the Appendix as pages One through Twelve *infra*.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 8, 1971. Jurisdiction of this court is invoked under 28 U.S.C. Section 1254.1. Among other reasons for the appeal is that there ought to be uniformity among the courts of the United States as to one of the issues involved in this cause, namely, whether the United States may, through a third party action for indemnity, obtain judgment against a state in a tort case.[1]

STATUTES INVOLVED

The statutory provisions involved are:

Chapter 37, Section 439 8 D of the Illinois Revised Statutes.

Title 28, Section 1346, U.S. Code

Article 4, Section 26 of the Illinois Constitution.

These statutory and constitutional provisions are set forth in the Appendix on pages 13 and 14.

QUESTIONS PRESENTED

1. Whether an unconsenting State has immunity from suit by the United States in a Third party action for indemnity for monies paid on account of a tort action.

1. In *Parks* v. *U.S.*, 241 F. Supp. 297, the court denied to the United States the power to file a third party action. Contrary, *Lee* v. *Brooks,* 315 F. Supp. 729 and *U.S.* v. *California,* 328 F. 2d 729.

2. Whether the amount of indemnity in such tort actions can exceed the amount set by the State for tort claims.

3. Whether on the facts as presented in this case the State of Illinois was liable to the United States for indemnity.

STATEMENT OF THE CASE

The original complaints in this case were filed on behalf of four individuals who were killed or injured at the 1966 State Fair. A unit of the United States Military Forces was performing with a rope attached to one end of a cat walk atop of the grandstand which was kept taut by a truck down below.

The Green Berets had for a long time prior to the accident, at public exhibitions throughout the country, staged their act, which consisted of having a taut rope, affixed at one end to a stanchion or roof of an edifice, with the other end attached to a truck pulled as taut as possible. A Green Beret would slide down the rope on a stretcher to demonstrate their ability either in combat or otherwise, to pass over physical obstacles.

The facts showed that on all occasions except the day of the accident, the marines had tested the rope when there was an empty grandstand but, that at the time of the accident, the test was made while there were spectators in the grandstand. The undisputed facts also proved that because there were trial time races going on for qualifying round races, the truck pulling the rope had to be moved further away from the stanchion on the roof

of the grandstand, therefore, the length of the rope had to be substantially increased.

On these facts the court found that the State had been actively negligent while the United States was passively so and entered judgment against the State and for the United States in an amount in excess of $600,000. The basis of that finding was that the manager of the State Fair required the Green Berets to tie their rope to an angle iron stanchion and no other places and represented that this stanchion was welded to the structure. It turned out that they were fastened by screws.

On these facts the United States was permitted judgment in a third party action against the State of Illinois for the amount that it had paid the claimants although the Illinois Statutes limit recovery to $25,000 to each individual.[2]

REASONS FOR GRANTING THE WRIT

I.

Whether a State may be impleaded pursuant to the provisions of Rule 14 in a tort case where the United States is not a party plaintiff in the case and whether Rule 14 can be interpreted to apply to one of the states and whether such application is in violation of the 10th Amendment.

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2. Chapter 37, Section 439 8 D of the Illinois Revised Statutes.

II.

Assuming that a state could be so impleaded, may judgment be granted against the State in favor of the United States in violation of the public policy of that state, that is, the statutes which limit recovery in a tort action to $25,000 for each individual.

ARGUMENT

I.

The sovereignty of an unconsenting State to be immune from suit by its own citizens has been repeatedly upheld.

The sovereign immunity should not lightly be disturbed; especially without express Congressional authority. Further, it is clear that the judgment invades the sphere of states rights which are reserved to the states by the 10th Amendment to the Constitution of the United States.

Further, if the judgment rendered against the State of Illinois is valid then in a similar matter a judgment might be rendered against a state for an astronomical sum. It is conceivable for instance that instead of four people being killed or injured in the situation herein involved, 4000 might have been.

It seems clear that the sovereign immunity from suit should protect the State of Illinois from a suit for indemnity by the United States and that the delicate balance of relations between the states and the United States should not be disturbed by decisions which ignore the basic principle that the sovereignty in this Union rests with the people and the Federal government has only those powers delegated to it by the people. To subject a sovereign state to a suit in a tort claim action beyond the limits set by it, completely destroys the fundamental principle of sovereignty. To permit the decision below to stand would be to permit the Federal government to nullify a provision of the Illinois Constitution. What could be more destructive to the ropes of unity that hold this nation together?

There is a conflict in the Federal Courts as to whether or not unconsenting states may be sued in third party actions for indemnity in tort situations.[3]

There are other cases along these lines but the conflicts and doctrines as set forth in the decisions are irreconcilable and this court has not spoken out on this issue.

This court has held in cases involving the exercise of property rights of states such as ownership of oil lands, boundary limitations, river beds and so forth[4], that it has jurisdiction to decide controversies in which a state is defendant but it is not so held in cases in which the state exercises its sovereignty.

In no case was an attempt made by the United States to obtain indemnification in a tort matter and in no case has this court passed upon the validity of such an action. That wide spread public interest exists is likewise shown in the law review articles which have been written in connection with the problems presented by this case.

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3. *Parks* v. *U.S.*, 241 F. Supp. 297; *U.S.* v *California*, 328 F. 2d 729; *Lee* v *Brooks*, 315 F. Supp. 729.

4. *U.S.* v. *Texas*, 339 U.S. 707 dealt with a boundary dispute; *U.S.* v. *California*, 332 U.S. 19 dealt with offshore oil lands; *U.S.* v. *Wyoming*, 331 U.S. 440 dealt with title to oil land; *U.S.* v. *Alabama*, 313 U.S. 274 dealt with whether the United States could have removed as a cloud on its title state tax liens on U.S. owned land; *U.S.* v. *Oregon*, 295 U.S. 1, dealt with the title to a non-negotiable lake; *U.S.* v. *Arizona*, 295 U.S. 174, was an original suit by the United States against Arizona with regard to the Colorado River; *U.S.* v. *West Virginia*, 295 U.S. 463, involved construction of a dam; *U.S.* v *Utah*, 283 U.S. 64, was a suit to quiet title to land which was part of the Colorado River; *U.S.* v. *Oklahoma*, 261 U.S. 253, was a suit in regard to priority of liens of a liquidating bank.

Some of these are: Michigan Law Review, Volume 64, page 948; Volume 13, U.C.L.A., 434; Volume 11, Stanford Law Review, page 665.

Some of the problems inherent in such matters are discussed in *Virginia* v. *West Virginia*, 238 U.S. 202, 246. U.S. 565, and the court left open the legality and advisability of awarding a mandamus to compel an action which was committed to the discretion of the legislature in ordering the levy of a tax and the court never settled the problem of enforcement of judgments and the court never settled the extent to which a State may be required to perform an action which required the exercise of legislative power.

We urge the court that the jurisdiction exercised herein by the Federal Courts should not have been exercised without express Congressional approval and that this court should accept jurisdiction of this appeal and settle the questions we have attempted to set forth in this presentation.

II.

But even were we to concede that the United States has the right and the Federal Courts jurisdiction in a third party action this judgment violates the public policy of the State of Illinois which limits personal injury claims to $25,000 each.[5]

In this case by suing the United States instead of suing the State of Illinois these parties were awarded an

5. Chapter 37, Section 439 8 D of the Illinois Revised Statutes.

average of over $150,000 per claim in violation of the public policy of the State of Illinois.

Further, if the positions of the courts below are correct then there was no liability at all on the United States[6] and the determinations as arrived at in this case merely permit a complete avoidance of the public policy of the State of Illinois and an enrichment of these plaintiffs far in excess of that permitted others injured in this State.

We point out to the court that even those cases which allow the filing of a third party claim by the United States against a State for indemnification of a tort holds that the right of the United States to recover is controlled by state law and the result reached by the Circuit Court of Appeals in this case is palpable error and ought to be reversed.[7]

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6. The Court said:

> "On the other hand, the trial courts only finding of Government negligence was its conclusion that the 'United States of America, through its agents, was negligent in that the Green Berets relied upon the representations of the agents of the State of Illinois and failed to conduct inspections adequate to reveal the manner in which the platform was affixed to the superstructure of the grandstand.' While we entertain serious doubt that the Government was shown to have been negligent at all, this question has been mooted by the Government's payment of the judgments against it."

7. *Lee* v. *Brooks*, 315 F. Supp. 729. Most recently the Circuit Court of Appeals for the 6th Circuit in *Hill* v. *U. S.*, 40 L W 2477 held that the United States cannot, in action against it for injuries caused by ROTC personnel during Tennessee State University football game, recover

III.

In our view, however, the finding of the court below that the United States was only passively negligent is palpable error.

The facts in this case are clear that the Green Berets had the sole control of their show; that they made the final decision where to tie the rope on the cat walk and that they physically pulled the cat walk from the roof. The court has completely ignored the evidence that the Green Berets could easily have determind the manner in which the stanchion was attached to the roof by looking and that the particular accident was caused by them lengthening the rope and pulling it taut when people were in the stands. To call all this passive negligence is palpable error.

CONCLUSION

For these many reasons then we urge the court to grant certiorari.

Respectfully submitted,

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contribution from state as joint tort-feasor since right to contribution is derivative of state's liability to injured party and, under doctrine of sovereign immunity, Tennessee could not be held liable to injured party.

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

SEPTEMBER TERM, 1971—SEPTEMBER SESSION, 1971

No. 18558
UNITED STATES OF AMERICA,
Third Party Plaintiff-Appellee,

v.

STATE OF ILLINOIS,
Third Party Defendant-Appellant.

No. 18559
STATE OF ILLINOIS,
Fourth Party Plaintiff-Appellee,

v.

LLOYD'S OF LONDON,
Fourth Party Defendant-Appellant.

Appeals from the United States District Court for the Northern District of Illinois, Southern Division.
Civil Nos. 4187, 4189, 4236 and 4272
OMER POOS, *Judge*

DECEMBER 8, 1971

Before HASTINGS, *Senior Circuit Judge,* and PELL and SPRECHER, *Circuit Judges.*

HASTINGS, *Senior Circuit Judge.* This matter originated with the filing of four separate complaints on behalf of four individuals killed or injured at the 1966 Illinois State Fair, when a portion of a catwalk on top of the grandstand was pulled free from the roof during a performance by a United States Army Special Forces Unit, the Green Berets. The actions were filed against the United States of America[1] based on the alleged negligence of the Green Berets in performing their act.

United States brought a third-party action for indemnity against the State of Illinois contending that the negligence of the Green Berets, if any, was passive in nature, while Illinois was actively negligent and primarily responsible for the losses. Subsequently, Illinois in turn instituted a fourth-party action against Certain Underwriters at Lloyd's of London seeking recovery under a liability insurance policy for any amount for which Illinois might be held liable to the United States.

The four suits were consolidated for trial and were tried to the district court, without the intervention of a jury. The district court filed findings of fact, stated its conclusions of law and entered judgments thereon in favor of three of the plaintiffs against the United States in the aggregate sum of $637,847.03. After denying the motion of Illinois to dismiss the third-party complaint, the trial court held that Illinois was actively negligent as a matter of law and that the Green Berets were passively negligent, and determined that Illinois was required to reimburse the United States. The trial court further found and held that the subject insurance policy entitled Illinois to be reimbursed by Lloyd's of London.

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1. The complaints were brought under the Federal Tort Claims Act, Title 28, U.S.C.A. § 2671, et seq.

The United States paid in full the judgments against it by plaintiffs and plaintiffs are no longer concerned in these appeals. In No. 18,558, Illinois has appealed, and in No. 18,559, Loyd's of London has appealed.

The issues presented in No. 18,558 are (1) whether the district court had jurisdiction to implead and hear a third-party complaint for indemnity brought by the United States against the State of Illinois pursuant to Title 28, U.S.C.A. § 1345, and (2) whether the district court correctly found and held Illinois to be actively negligent and the United States to be only passively negligent and entitled to indemnity under the facts of this case.

The issue presented in No. 18,559 is essentially whether the automobile racing liability policy issued by Lloyd's of London applied to and covered the State of Illinois, not a named insured, and whether it applied to and covered the Green Beret performance in question. The United States is not a party to this appeal.

We deem it appropriate to make a brief statement of the underlying facts before proceeding to a discussion of the issues.

A Green Beret unit was invited by the manager of the Illinois State Fair to appear and perform as a part of the entertainment at the 1966 Fair on the State Fair Grounds in Springfield, Illinois. The State provided transportation, room and board for the twenty-one Green Berets who were to present two daily performance demonstrations from August 12 through August 21, 1966. The performance included, among other things, a demonstration of the techniques of traversing an open space by sliding down a rope attached at one end to a catwalk on the roof of the grandstand and kept taut by tying the other end to a truck or tractor on the ground below.

Prior to their August appearance, two officers from the unit made an inspection trip to the fairgrounds to determine how they might rig their various acts. At that time they were introduced to Ralph G. Heger, the long time manager, employed by Illinois, in charge of all the activities at the grandstand for the Fair. The officers inquired about an appropriate point to attach the elevated end of the rope to the grandstand, explaining they would need a firm place to tie down the rope used in rapelling and traversing. Heger represented to them that certain metal angle irons, which were part of the catwalk on the grandstand, were welded to the mental superstructure.[2] It was not possible then to get up on the roof to check the connection and the Fair manager did not provide the officers with available blueprints. Such blueprints would have shown that the angle irons were attached to the wooden roof with 1½" wood screws.

When the entire Green Beret Unit arrived at the Fair on August 11, 1966, Heger directed Sergeant Rumrill, who was in charge of the rope acts, to tie the rope only to the stanchions at that time, saying this was "the only safe place to tie." Rumrill was left only with the choice of which angle iron to tie on. Heger repeated such assurance and directions. Relying on this information, the Green Berets tied their rope at that point. They were subsequently denied permission to cut through the tarpaper roof to check the metal to metal connection and later were refused permission to tie at a different point for their own convenience.

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2. Heger's answer was "well, if you tie onto the stanchions going into the roof, the four by four steel beams going into the roof, they are welded, metal to metal to the superstructure."

The Green Berets performed their show several times on days prior to the accident. On the day of the accident, August 20, the rope was attached at one end to the angle irons at the catwalk and at the other end to a truck which had been repositioned from previous acts, resulting in more tension on the rope. The rope was pulled more taut by driving the truck away from the grandstand. While it was being tested for tautness, the moorings of the catwalk loosened and a portion of the catwalk fell upon the grandstand and race track below.

As a result of the fall of the catwalk, two photographers who were on the catwalk and Heger, standing on the ground, were killed and two spectators in the stands were seriously injured. At the time of the accident, time trials were being conducted on the race tracks for an upcoming automobile race.

After the accident, it was discovered that the metal angle irons were not welded or attached to the metal superstructure of the grandstand as represented by Heger, but rather were attached by screws to the wooden portion of the roof. Blueprints of the grandstand on file with Illinois, but not disclosed to the Green Berets, verified this condition. The Green Berets, relying upon this misinformation by Illinois, failed to inspect the manner of the attachment of the catwalk to the roof. Th trial court found, *inter alia*, that had the angle irons been attached "metal to metal" as represented by Illinois, they would have withstood the tension placed upon them.

No. 18,558

Illinois contends that the federal district court had no jurisdiction to impead the State of Illinois in the case at bar. It asserts immunity from such an action, claiming

(1) that it is barred by the Eleventh Amendment to the Federal Constitution and by Article IV, Section 26 of the Illinois Constitution; (2) that jurisdiction under 28 U.S.C.A. § 1345 extends only to suits "commenced" by the United States, and not to a third-party action; and, (3) that Rule 14 of the Federal Rules of Civil Procedure, 28 U.S.C.A., authorized impleader only of "persons", and that the State is not a person.

In our judgment, after reviewing the relevant authorities, the claim of immunity here is misplaced and the arguments advanced have been uniformly rejected by the federal courts.

The Eleventh Amendment reads: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The mere reading of this amendment makes clear that it has no application to suits brought by the United States for indemnity or for any other purpose. It applies to actions brought against a state by citizens of another state, which prohibition has now been extended to its own citizens, unless the State consents to be sued. *Truitt* v. *State of Illinois*, 7 Cir., 278 F. 2d 819, 820 (1960), cert. denied, 364 U.S. 866, and cases cited therein.

As in *Truitt*, *supra*, in the instant case the State of Illinois did not consent to be sued and, in fact, could not so consent in view of Art. IV, § 26 of its own Constitution, which provides: "The State of Illinois shall never be made defendant in any court of law or equity." Further, it may not be seriously contended that § 26, *supra*, immunizes the State from a suit by the United States. *United States* v. *Texas*, 143 U.S. 621, 646 (1892).

Congress enacted 28 U.S.C.A. § 1345 in its present form on June 25, 1948 (62 Stat. 933), which reads: "Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." A comprehensive scholarly review of the legislative history and the constitutional aspects of this legislation, together with subsequent judicial interpretation and well reasoned commentaries thereon, appears in Circuit Judge Browning's opinion, reported as *United States* v. *State of California*, 9 Cir., 328 F. 2d 729 (1964), cert. denied, 379 U.S. 817. We follow this decision and, Congress not having otherwise provided, hold that jurisdiction is vested in the federal district courts over suits by the United States against a state. It necessarily follows that a direct action by the United States against the State of Illinois for indemnity could have been filed in the federal district court. *See Parks* v. *United States*, D.C., N.D., N.Y., 241 F. Supp. 297, 299 (1965).

The instant claim for indemnity is merely a claim by the United States that it has suffered a loss by reason of the negligence of Illinois. The district court, having jurisdiction over an original action by the United States for indemnity, would have jurisdiction over the identical claim brought as a third-party action. We find no sound basis for a contrary result based on the nebulous theory that the original action was "commenced" by other plaintiffs. *See Chapman* v. *United States*, D.C., N.D., Ill. No. 66-C-2335, unreported, decided May 24, 1968, a comprehensive review of the law applicable herein; *Williams* v. *United States*, D.C., S.D., N.Y., 42 F.R.D. 609 (1967);

Lee v. *Brooks*, D.C., Hawaii, 315 F. Supp. 729 (1970); and *United States* v. *California supra*. *Parks* v. *United States*, *supra*, contra on this issue.[3]

Finally, Illinois urges that Rule 14, *supra*, of the Federal Rules of Civil Procedure, governing third-party practice, is applicable only to "persons", and that Illinois is not a person. We find no rational basis to support this contention, since the rationale of the foregoing authorities leads to a contrary conclusion. We need not analyze them further here. It is sufficient to note that whether the State is a person within the meaning of a federal rule or statute depends upon the legislative intent. *Sims* v. *United States*, 359 U.S. 108 (1959), where the Court, at page 112, in determining the meaning of the term "person" as used in a section of the Internal Revenue Code, includes a State, said that this "depends upon its legislative environment." The Court pointed out that although a statute may not expressly mention States among those it includes, it may become "equally clear that it does not *exclude* them". We conclude here, as the Court did in *Sims*, "that the subject matter, the context, the legislative history, and * * * the legislative environment, of * * * [Rule 14] makes it plain that Congress intended to and did include States within the term 'person' as used in * * * [Rule 14]." Illinois is not immune from this third-party action.

On the second issue, concerning *active* and *passive* negligence, we find overwhelming support in the record

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3. *Parks* appears to stand alone on this issue and has been disapproved by succeeding courts. It has been criticized by commentators, viz: 65 Col. L. Rev. 1506 (1965); 64 Mich. L. Rev. 948 (1966); and 13 U.C.L.A. L. Rev. 433 (1966).

evidence, as earlier herein set out, that Illinois was actively negligent. The misinformation furnished the Green Berets concerning the stanchions' metal to metal connection to the grandstand roof; the requirement that the rope be tied only to the stanchions on the roof, as the only safe place; the refusal to permit the Green Berets to carefully inspect and check the connection; and the failure to make the pertinent blueprints available, all lead to the inevitable conclusion that Illinois was actively negligent and primarily responsible for this accident and resulting injuries and deaths.

On the other hand, the trial court's only finding of Government negligence was its conclusion that the "United States of America, through its agents, was negligent in that the Green Berets relied upon the representations of the agents of the State of Illinois and failed to conduct inspections adequate to reveal the manner in which the platform was affixed to the superstructure of the grandstand." While we entertain serious doubt that the Government was shown to have been negligent at all, this question has been mooted by the Government's payment of the judgments against it.

Under well established Illinois law the determination of questions of active and passive negligence and their relationship to primary liability for injuries flowing therefrom are essentially questions of fact to be determined on a case by case basis. Illinois holds that "a passively negligent tort-feasor * * * [is allowed] to obtain indemnification from an actively negligent tort-feasor", *Miller* v. *DeWitt*, 37 Ill. 2d 273, 289-290 (1967), citing *Griffiths & Son Co.* v. *National Fireproofing Co.*, 310 Ill. 331 (1923); *Chicago and Illinois Midland Railway Co.* v. *Evans Const. Co.*, 32 Ill. 2d 600 (1965). *See also American*

Tel. and Tel. Co. v. *Leveque*, 30 Ill. App. 2d 120, 129-130 (1961).

Under the foregoing Illinois authorities, we hold that the State of Illinois was actively negligent and the United States was passively negligent and that by virtue thereof Illinois was properly ordered to indemnify the United States of America in full for all monies paid by it in this action.

No. 18,559

Fourth-party defendant Certain Underwriters at Lloyd's of London was signatory to Policy No. CL.16042, dated August 17, 1966, issued as an Automobile Racing Liability policy to "Illinois State Fair, The Illinois State Agency, General Manager, all personnel, and the United States Auto Club." The State of Illinois is not a named assured under the policy.

Within prescribed limits, the insuring agreement of the policy provides coverage for "* * * bodily injury * * * including death * * * sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the premises stated above for the purpose of automobile racing events, including practice and time trials on reported race days."

Exclusion 7 of the policy provides that "This policy excludes liability * * * arising from * * * any event, show or exhibition other than an automobile show, exhibition or race [including practice and time trials] * * * unless specifically agreed and endorsed hereon."

Without any supporting findings of fact, the district court concluded that under this policy of insurance "coverage of the State of Illinois was contemplated",

and ordered that Lloyd's of London pay to the State of Illinois "an amount equal to the payments for damages as provided by its policy of insurance and the costs", not in excess of policy limits.

Lloyd's of London contends on appeal that the Green Berets were not conducting or using the Illinois State Fair premises for the purpose of automobile racing; that the exhibitions by the Green Berets were separate and distinct from all other grandstand shows, including the automobile race conducted by the United States Auto Club; that the Green Berets' activities were not related in any way to the 100-mile automobile race being conducted on the day of the accident at the Illinois State Fair; that under the circumstances, the policy did not apply to the liability of the State of Illinois to the United States for its failure to give warning of the grandstand's construction for the Green Berets' activities; and, *inter alia*, that Exclusion 7 of the policy excludes coverage of the State of Illinois for negligently allowing the Green Berets to use the premises for a Green Beret event.

At the outset, it is significant to note that Illinois, neither on brief nor in oral argument, in any way replied to or challenged the contentions of Lloyd's of London in this appeal. Not being a party to this appeal, it becomes obvious why the United States has not responded.

Under the facts of this case, we readily conclude that the district court erred in its mixed findings of fact and conclusions of law on this question. We hold that the subject Automobile Racing Liability policy, as a matter of law, does not apply to the liability of the State of Illinois to the United States of America, and that the judgment of the district court in this appeal should be reversed.

In light of this opinion, the judgment of the district court in appeal No. 18,558 is affirmed and in appeal No. 18,559 is reversed.

AFFIRMED IN No. 18,558

REVERSED IN No. 18,559

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

Illinois Revised Statutes, Chap. 37, Sec. 439.8d

(d) All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, at law or in chancery, if the State were suable, and all claims sounding in tort against the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System or the Board of Governors of State Colleges and Universities, provided that an award for damages in a case sounding in tort shall not exceed the sum of $25,000 to or for the benefit of any claimant. The defense that the State or the Medical Center Commission or the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System or the Board of Governors of State Colleges and Universities is not liable for the negligence of its officers, agents, and employees in the course of their employment shall not be applicable to the hearing and determination of such claims.

(b) Subject to the provisions of chapter 171 of this District Court for the District of the Canal Zone and the title, the district courts, together with the United States District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, un-

der circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

CONSTITUTION OF ILLINOIS 1870

§ 26. The state of Illinois shall never be made defendant in any court of law or equity.